



PLANNING COMMISSION AGENDA REPORT

MEETING DATE: JUNE 23, 2008

VI.5

ITEM NUMBER

SUBJECT: ZONING APPLICATION ZA-08-17 TO MODIFY CONDITION NO. 17 OF MASTER PLAN PA-07-20 (WESTSIDE LOFTS MIXED-USE DEVELOPMENT) AT 1640 MONROVIA AVENUE

DATE: JUNE 10, 2008

**FOR FURTHER INFORMATION CONTACT: MINOO ASHABI, AIA, SENIOR PLANNER
(714) 754-5610**

DESCRIPTION

The proposed request is an amendment to Final Master Plan PA-07-20 to modify a condition of approval that would allow the 151 condominium units to be initially offered as rentals units as opposed to "for-sale" units. No design or density changes are proposed.

APPLICANT

Cynthia J. Nelson, authorized agent for Nexus Development Corporation.

RECOMMENDATION

Approve modification to Condition No. 17 to clarify the terms and conditions in which the residential condominiums may be rented/leased by adoption of the Planning Commission resolution.

MINOO ASHABI, AIA
Senior Planner

KIMBERLY BRANDT AICP
Asst. Development Svs. Director

BACKGROUND

Project Location

The 6.82-acre project site is located at 1640 Monrovia Avenue in the Westside. The property is designated as Light Industry in the City's General Plan and zoned as General Industrial (MG). It is also located within the Mesa West Bluffs Urban Plan / mixed-use development overlay zone (Attachment 1, Vicinity Map).

The site is surrounded by various industrial uses such as Von Hemert Interiors delivery to the south in the City of Newport Beach, Pacific Track Center to the north, McMahon Asphalt (1670/1664 Babcock Street) to the northeast, and a multi-tenant industrial building and Playport Mobile Home Park to the west. MacGregor Yachts, which operate outdoor generators, is located east of the site.

ANALYSIS

This item was referred by the Zoning Administrator for consideration of the Planning Commission.

Zoning Application ZA-08-17 is a request to amend the final master plan approved for the Westside Lofts project to allow the 151 condominiums to be initially offered as rental units. The project approval included a master plan for development of a mixed-use development including 42,000 square feet of commercial space, 151 residential condominiums, and five live/work units, and a 4.5-level parking structure (Attachment 5). The project also included a vesting tentative tract map (VT-16999) for subdivision of the property into office uses, live/work units and common interest development that was approved concurrently with the final master plan.

On November 13, 2007, the Planning Commission approved the Final Master Plan PA-07-20 with adoption of Resolution No. PC-07-79 (Attachment 2). To ensure ownership housing, the Planning Commission added Condition No. 17 to the resolution of approval:

"All residential units and live/work units shall be initially offered as "for sale" units. The site shall not be developed for apartments or other non owner-occupied units. Prior to issuance of building permits for plan check, applicant must submit a subdivision application for processing. The subdivision map shall be final and recorded prior to issuance of building permits."

Original Intent of Condition No. 17

The intent of this condition is to provide some assurance that the residences would be sold as condominiums; however, this assurance has its limitations because:

- Condition does not 100% guarantee condominiums will not be rented/leased. As currently worded, this condition compels the Developer to first record the

subdivision maps and build the units to condominium standards, market the units as owner-occupied housing, and pay approximately \$1.6 million to the City in park fees. However, as with any new housing development with a recorded subdivision map, it is difficult to guarantee that units will be ultimately sold as condominiums or function as owner-occupied units. For instance, a condominium owner may purchase the property but then lease it to other parties.

- Property owner may still retain ownership of condominiums and offer them as rentals. For example, The Lakes Apartments on Sunflower Avenue/Avenue of the Arts was originally approved and built as a condominium development. While a final map was recorded which allows the units to be sold as condominiums, this development has functioned as an apartment complex.

More recently, a 10-unit single-family detached residential development was constructed at 2436 Newport Boulevard. These are large homes ranging from 1,800 to 2,000 square feet in size. While a final map is recorded, due to the housing market conditions, all 10 units are now being leased. It is the developer's hope that the market will soon recover and these homes will be eventually sold.

- This condition does not prohibit the units from being offered as rental units, if a reasonable effort was made to sell them as condominiums. Technically, the condition allows the Developer to initially market the sale of these units for an unspecified timeframe. If the market conditions diminish the sales opportunities, a second offering of these units as rentals would still be consistent with Condition No. 17 as currently worded.

Amendment Request

The applicant has requested an amendment that would allow the units to be initially offered as rental housing (Attachment 3). The proposed amendment is considered a major amendment to the final master plan. In accordance with Title 13, Section 13-28(g)(2) of the Municipal Code, the Zoning Administrator is authorized to review and approve major amendments to master plans. Public notices were provided to the property owners within 500 feet of the site and staff received several letters in opposition of the proposed amendment (Attachment 4). Thus, the project was referred to the Planning Commission for consideration for two primary reasons:

1. The high-profile nature of the project as the first urban plan project in the Westside; and,
2. The removal or modification of Condition No. 17 is a policy decision of the Planning Commission as to whether or not this condominium project may be initially offered as rental/lease units.

Merits of Request to Modify Condition No. 17

Staff believes this condition (as is) could allow the Developer to eventually proceed with leasing the units. The applicant is requesting that the condition expressly allow leasing. The condition's current wording also may make it difficult for the applicant to secure bank financing for the project.

Therefore, staff believes that the applicant's request to modify Condition No. 17 would be an opportunity to clarify the terms and conditions in which the dwelling units may be leased. In addition, the revised condition expressly requires that a homeowner's association be created and CC&Rs be recorded to ensure that these important elements of a condominium development be implemented.

The following modifications are suggested:

"All live/work units shall be initially offered as "for sale" units. Prior to approval of the final subdivision map, the applicant shall obtain from the State of California Department of Real Estate a written acknowledgement that the developer of this residential condominium project, that will include a recorded subdivision map, recorded CC&Rs, and establishment of a homeowners association, may proceed to rent and/or lease the units for an indefinite period of time. All 151 residential condominiums may be initially offered as rental units. The subdivision map shall be final and recorded prior to issuance of building permits. Park fees currently estimated at approximately \$1.6 million dollars shall be remitted to the City prior to approval of the final map. The dwelling units shall be constructed to condominium building standards (i.e. advanced noise attenuated walls, increased firewall standards, etc.). If the housing market conditions are supportive of condominium sales, the Developer shall make reasonable efforts to sell these units as condominiums in the future. "

The applicant is required to proceed as planned with recordation of a condominium map prior to issuance of building permits and pay of all applicable subdivision fees (park fees, transportation impact fees, etc.). Therefore, unlike a traditional apartment rental project, these units shall be constructed to high condominium standards, and the developer will remit over 1.6 million dollars to city in park fees.

ALTERNATIVES CONSIDERED

Planning Commission may consider the following:

1. Approve amendment to Final Master Plan. Approval of the proposed amendment would allow the applicant to proceed with the project plan. However, allowing the condominiums to be rented/leased would increase the number of rental housing units in the City, which was not envisioned by adoption of the Westside Urban plans. There is a possibility that these units may be sold as condominiums shortly after construction if the housing market recovers.

2. Deny amendment to Final Master Plan. Planning Commission may be concerned with the uncertainty of how long these units would remain as rentals and may deny this request. Denial of the proposed amendment would maintain the original intent of the project, which was submitted and approved as an ownership project for the residential component. Denial of this request may likely eliminate the possibility of the project being implemented in the next 3-5 years due to failure to finance.

ENVIRONMENTAL DETERMINATION

The Westside Lofts Initial Study/Mitigated Negative Declaration was prepared and adopted in accordance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the City of Costa Mesa Environmental Guidelines. The proposed amendment is minor relative to previously analyzed environmental impacts of the project. Project-specific mitigation measures were certified and included as conditions of approval that would remain in effect.

CONCLUSION

The applicant has requested an amendment to conditions of approval to allow the development of 151 condominium units and initially offer them as rental units. The proposed amendment may ensure timely development of the project; however, the City currently has a high ratio of rental units in relation to ownership units in comparison with other neighboring cities and this project would further increase the rental unit count. It should be noted that the project has the potential to be sold as condominium units in the future since a condominium map is required to be recorded and the project would be built according to condominium standards; however once this amendment is approved, the sale of the condominiums would not be guaranteed.

Attachments:

1. Vicinity Map
2. Planning Commission Resolution for approval or denial
3. Applicant's Letter
4. Correspondence in opposition
5. Approved Plans

Distribution:

- Assistant City Attorney
- Deputy City Manager- Dev. Svs. Director
- Dept. of Public Services – Director
- City Engineer
- Fire Protection Analyst
- Staff (4)
- File (2)

Ms. Cindy Nelson
Nexus Development
1 MacArthur Place, Suite 300
Santa Ana, CA 92707

Mr. Mike Evans
1720 Whittier
Costa Mesa, CA 92627

Mr. Hawley, David
Railmakers, Inc.
1056 San Pablo Cir
Costa Mesa, Ca 92626

Mr. Roger MacGregor
Roger MacGregor Yacht Corporation
1631 Placentia
Costa Mesa, CA 92627

File: 062308ZA0817	Date: 061208	Time: 4:00 p.m.
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City of Costa Mesa

1640 MONROVIA AVE. - [Created: 6/6/2008 2:37:27 PM] [Scale: 214.29] [Page: 8.5 x 11 / Portrait]

Overview Map



Legend

Address
SmallAddress
PointsFreeway
RoadsCollector
(cont)Freeway
MajorNewport Blvd
(cont)Primary
SECONDARYWaterway
Lines

Map Display



RESOLUTION NO. PC-08-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA APPROVING ZA-08-17 FOR AN AMENDMENT TO FINAL MASTER PLAN PA-07-20 FOR THE WESTSIDE LOFTS MIXED USE DEVELOPMENT AT 1640 MONROVIA AVENUE.

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, Zoning Application ZA-08-17 was filed by Cynthia Nelson of Nexus Development Corporation for the property located at 1640 Monrovia Avenue, requesting modification of Condition No. 17 of Resolution PC-07-79 to allow 151 condominium units to be initially offered as rental units;

WHEREAS, the proposed Westside Lofts mixed-use development consists of a Final Master Plan PA-07-20 for (a) 42,000 sq. ft. commercial space in two- to-four story buildings; (b) 151 residential condominiums in a four-story building complex; (c) 5 custom live/work units in three-story buildings; (d) 4.5-level parking structure and surface parking spaces (overall total of 475 parking spaces);

WHEREAS, a duly noticed public hearing was held by the Planning Commission on June 23, 2008 with all persons having been given the opportunity to be heard both for and against the proposed project;

WHEREAS, Zoning Application ZA-08-17 involves revising Condition No. 17 of PC Resolution PC-07-79 to reflect the following final language:

All live/work units shall be initially offered as "for sale" units. Prior to approval of the final subdivision map, the applicant shall obtain from the State of California Department of Real Estate a written acknowledgement that the developer of this residential condominium project, that will include a recorded subdivision map, recorded CC&Rs, and establishment of a homeowners association, may proceed to rent and/or lease the units for an indefinite period of time. All 151 residential condominiums may be initially offered as rental units. The subdivision map shall be final and recorded prior to issuance of building permits. Park fees currently

estimated at approximately \$1.6 million dollars shall be remitted to the City prior to approval of the final map. The dwelling units shall be constructed to condominium building standards (i.e. advanced noise attenuated walls, increased firewall standards, etc.). If the housing market conditions are supportive of condominium sales, the Developer shall make reasonable efforts to sell these units as condominiums in the future.

BE IT RESOLVED that, based on the evidence in the record, the Planning Commission hereby **APPROVES** the requested amendment to Resolution of approval PC-07-79 with respect to the property described above.

BE IT FURTHER RESOLVED that the Costa Mesa Planning Commission does hereby find and determine that adoption of this Resolution is expressly predicated upon the activity as described in the staff reports for ZA-08-17 and PA-07-20, based on the findings contained in Exhibit "A" and conditions of approval contained in Exhibit "B" (as modified herein), and mitigation measures contained in Exhibit "C" of PC Resolution PC-07-79. The revised Planning Commission Resolution PC-07-79 is attached as Exhibit 1.

PASSED AND ADOPTED this 23rd day of June, 2008.

Donn Hall, Chair
Costa Mesa Planning Commission

STATE OF CALIFORNIA)
)ss
COUNTY OF ORANGE)

I, Kimberly Brandt, secretary to the Planning Commission of the City of Costa Mesa, do hereby certify that the foregoing Resolution was passed and adopted at a meeting of the City of Costa Mesa Planning Commission held on June 23, 2008, by the following votes:

AYES: COMMISSIONERS

NOES: COMMISSIONERS

ABSENT: COMMISSIONERS

ABSTAIN: COMMISSIONERS

Secretary, Costa Mesa
Planning Commission

RESOLUTION NO. PC-07-79

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA, ADOPTING THE WESTSIDE LOFTS INITIAL STUDY/MITIGATED NEGATIVE DECLARATION AND APPROVING FINAL MASTER PLAN PA-07-20 AND VESTING TENTATIVE TRACT MAP VT-16999 FOR THE WESTSIDE LOFTS MIXED-USE DEVELOPMENT IN THE MG ZONE AND MESA WEST URBAN PLAN/MIXED-USE OVERLAY ZONE AT 1640 MONROVIA AVENUE.

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA DOES HEREBY RESOLVE AS FOLLOWS:

WHEREAS, the City Council enacted a Zoning Ordinance for a mixed-use overlay zone and adopted the Mesa West Urban Plan in April 2006 to allow mixed-use development, including live/work development, in specified areas of the Westside;

WHEREAS, an application was filed by Cindy Nelson of Nexus Development, authorized agent for the property owner, Grand Plan, LLC., for the Westside Lofts mixed-use development at 1640 Monrovia Avenue in the MG zone and Mesa West Urban Plan / mixed-use overlay zone;

WHEREAS, the proposed Westside Lofts mixed-use development consists of a Final Master Plan PA-07-20 for (a) 42,000 sq.ft. commercial space in two- to four-story buildings; (b) 151 residential condominiums in a four-story building complex; (c) 5 custom live/work units in three-story buildings; (d) 4.5-level parking structure and surface parking areas (overall total of 475 parking spaces);

WHEREAS, Final Master Plan PA-07-20 also includes minor deviations from the minimum FAR standard for the nonresidential component (0.175 FAR required, 0.161 FAR proposed) and maximum height limit for the parking structure (4 levels / 60 feet allowed, 4.5 levels / 54 feet proposed);

WHEREAS, the proposed project also includes a Vesting Tentative Tract Map VT-16999 for the subdivision of the property, including office uses, residential uses, and live/work units, for common-interest development purposes;

WHEREAS, the Initial Study/Mitigated Negative Declaration was prepared pursuant to CEQA, the CEQA Guidelines, and the City of Costa Mesa Environmental Guidelines. The environmental document considers all environmental impacts of the proposed project and identifies mitigation measures to reduce significant impacts to below a level of significance;

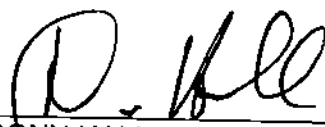
WHEREAS, the IS/MND was available for public review and comment from September 5, 2007 to October 4, 2007, and the Responses to Comments document provided responses to substantive comments received on the environmental document during the public review period;

WHEREAS, a duly noticed public hearing was held by the Planning Commission on November 13, 2007 with all persons having been given the opportunity to be heard both for and against the proposed project;

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission considers that the granting of the minor deviations related to the nonresidential FAR and parking structure height would result in a mixed-use development that meets the overall intent and objectives of the Urban Plan;

BE IT FURTHER RESOLVED that based on the evidence in the record, the findings contained in Exhibit "A", and subject to conditions of approvals in Exhibit "B" and mitigation measures contained in Exhibit "C", the Planning Commission hereby **ADOPTS** the Westside Lofts IS/MND and **APPROVES** Final Master Plan PA-07-20 and VT-16999 with respect to the property described above. Should any material change occur in the operation, or should the applicant fail to comply with the conditions of approval, this Resolution, and any recommendation for approval herein contained, shall be deemed null and void.

PASSED AND ADOPTED this 13th day of November, 2007



DONN HALL
Chair, Planning Commission

STATE OF CALIFORNIA)
)ss
COUNTY OF ORANGE)

I, Kimberly Brandt, secretary to the Planning Commission of the City of Costa Mesa, do hereby certify that the foregoing Resolution was passed and adopted at a meeting of the City of Costa Mesa Planning Commission held on November 13, 2007, by the following votes:

AYES: COMMISSIONERS: HALL, FISLER, CLARK, EGAN, RIGHEIMER

NOES: COMMISSIONERS: NONE

ABSENT: COMMISSIONERS: NONE

ABSTAIN: COMMISSIONERS: NONE



Secretary, Costa Mesa
Planning Commission

EXHIBIT "A"

FINDINGS

- A. Pursuant to Section 13-29(g)(5) of the Municipal Code, Final Master Plan PA-07-20 meets the broader goals of the 2000 General Plan and Mesa West Bluffs Urban Plan by exhibiting excellence in design, site planning, integration of uses and structures, and protection of the integrity of neighboring development.

The proposed mixed-use development will provide a new type of urban housing in the Westside, and this proposal complies with the important objectives of the Urban Plan: to promote Westside revitalization through homeownership, encourage owner-occupied housing, and apply flexible development standards to stimulate ownership housing. The project meets the purpose and intent of the mixed-use overlay district, and the stated policies of the Mesa West Bluffs Urban Plan. The new building will feature architecture that will complement the surrounding industrial uses. The proposed project would meet the industrial office and housing needs of a new community at a level no greater than which can be supported by planned infrastructure improvements. Planning Application PA-07-20 is consistent with the goals, policies, objectives, and/or regulations of the General Plan, Zoning Code, and Mesa West Bluffs Urban Plan.

The proposed residential use of the subdivision is compatible with the General Plan. The approval of the subdivision will allow home ownership opportunities without impacting rental housing. This is consistent with the goals, objectives, and policies of the General Plan Land Use and Housing Element.

- B. The proposed project complies with Title 13, Section 13-83.52(c), Mixed-Use Overlay District, of the Municipal Code because the Master Plan is found to exhibit excellence in design, site planning, integration of uses and structures and protection of the integrity of neighboring development. The proposed project complies with the Urban Plan to provide additional amenities or innovation in exchange for flexible development standards. The project includes adequate resident-serving amenities in the common and private open space areas including two different outdoor amenity areas and indoor clubhouses. Overall the proposed master plan represents a desirable product type in conformance with the City's policy and regulatory documents.
- C. The proposed project complies with Title 13, Section 13-83.52(d), Mixed-Use Overlay District, of the Municipal Code because:
- a) The strict interpretation and application of the Zoning Code's development standards would result in practical difficulty inconsistent with the purpose and intent of the General Plan and Mesa West Bluffs Urban Plan. While the proposed master plan does not strictly conform to development standards related to the parking structure height (4 levels allowed, 4.5 levels proposed) and minimum nonresidential FAR standard (0.175 FAR required, 0.16 FAR proposed), minor deviations from these regulations allow for a development that better achieves the purposes and intent of the General Plan and the Mesa West Bluffs Urban Plan. Deviation from development standards would still result in a well-designed urban housing project that is considered compatible with the Westside. The 42,000 square foot office buildings and the work areas of the

live/work unit are considered appropriate in size and scale for the 6.82-acre industrial site. The parking structure may exceed the story limit, but it is still within the height limit in terms of feet. The Urban Plan allows a 60-foot height limit, and the 4.5 level parking structure is proposed at 54 feet in height. Because the scale of the parking structure is still within the overall intent of the Urban Plan, this is considered a minor deviation.

- b) The granting of the deviation results in a mixed-use development which exhibits excellence in design, site planning, integration of uses and structures, and compatibility standards for this type of development in the Westside;
- c) The granting of a deviation will not be detrimental to the public health, safety, or welfare, or be materially injurious to properties or improvements in the vicinity. No adverse impacts from implementation of the proposed project are identified.
- d) The long-term vision of the Mesa West Bluffs Urban Plan is to encourage marginal industrial properties to be redeveloped into mixed-use development, live/work units, and residential development. The strict application of code requirements for residential development standards would discourage redevelopment of this new type of urban housing and thereby deprive the property owner of special privileges afforded in the Urban Plan area. The requests for specified deviations are considered reasonable and would result in implementation of a mixed-use development and residential ownership project supportive of the Urban Plan vision.

D. The proposed project complies with Title 13, Section 13-29(e), of the Municipal Code because:

- a) The proposed development and use is compatible and harmonious with uses both onsite as well as those on surrounding properties. Specifically, interior and exterior noise attenuation for the residential units is required. On-site hazardous materials remediation is also required prior to issuance of building permits.
- b) Safety and compatibility of the design of the buildings, parking areas, landscaping, luminaries, and other site features including functional aspects of the site development such as automobile and pedestrian circulation have been considered. The project shall provide a standard commercial drive approach from Babcock Street and Monrovia Avenue. Live/work units shall be constructed under commercial occupancy standards and fully-sprinklered. The lighting plan shall minimize light/glare to the surrounding neighbors and new residences to the fullest extent possible.
- c) The planning application is for a project-specific case and does not establish a precedent for future development in the overlay zone.
- d) The cumulative effects of Planning Application PA-07-20, including approval of requested deviations, have been considered.

E. The design of the subdivision provides, to the extent feasible, for future passive or natural heating and cooling opportunities in the subdivision, as required by Government Code Section 66473.1.

- F. The subdivision and development of the property will not unreasonably interfere with the free and complete exercise of the public entity and/or public utility rights- of-way and/or easements within the tract.
- G. The discharge of sewage from this subdivision into the public sewer system will not violate the requirements of the California Regional Water Quality Control Board pursuant to Division 7 (commencing with Section 13000 of the Water Code).
- H. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City's environmental procedures. The Westside Lofts Initial Study/Mitigated Negative Declaration (IS/MND) was prepared for the final master plan, pursuant to the California Environmental Quality Act. Although the proposed project could have a significant effect on the environment, mitigation measures have been included as conditions of approval that reduce impacts to the fullest extent reasonable and practicable. All significant impacts are reduced to below a level of significance with implementation of conditions and mitigation measures.
- I. Mitigation Measures from the Westside Lofts IS/MND have been included as conditions of approval. If any of these conditions are removed, the final approval authority must make a finding that the project will not result in significant environmental impacts, that the condition(s) are within the responsibility and jurisdiction of another public agency, or that specific economic, social, or other considerations make the mitigation measures infeasible.
- J. The evidence presented in the record as a whole indicates that the project will not individually or cumulatively have an adverse affect on wildlife resources or habitat. The project site consists of ornamental, non-native vegetation and does not contain, nor is it in proximity to, any sensitive habitat areas.
- K. The project, as conditioned, is consistent with Chapter XII, Article 3, Transportation System Management of Title 13 of the Municipal Code in that the project's traffic impacts will be mitigated at all affected intersections.
- L. The project has been reviewed for conformity with the Orange County Congestion Management Program (CMP) requirements and the additional traffic generated by the project does not cause the CMP highway system to exceed LOS "E".
- M. Pursuant to Section 13-29(g)(13) of the Municipal Code, the subject property is physically suitable to accommodate Vesting Tentative Tract Map VT-16999 in terms of type, design and density of development, and will not result in substantial environmental damage nor public health problems, based on compliance with the City's Zoning Code and General Plan.
- N. The site-specific 0.81 FAR for the Westside Lofts mixed-use development includes the building square footage of the commercial buildings, residential units, and live/work units. The floor area excludes the square footage of the parking structure, vertical shafts, and stairwell areas. The proposed scale, density, and intensity are considered

suitable for the project site because the project is below the 1.0 FAR standard established in the Mesa West Bluffs Urban Plan, and the overall project is within the development capacity of the General Plan.

- O. The project meets the purpose and intent of the Mesa West Bluffs Urban Plan related to an aesthetic analysis. An aesthetic analysis of the interface and compatibility between the proposed project and Playport Mobile Home Park located to the northwest was completed. The analysis related to shade/shadow impacts, neighborhood character, and privacy, and it concluded that the project was found to be compatible with surrounding residential uses. The proposed project would not result in significant adverse shade/shadow effects on the mobile homes. Furthermore, since the Urban Plan area has been identified as a revitalization area, this new type of four-story, "urban village" concept is within the height limit allowed, and deemed compatible with, uses in the overlay zone.
- P. The proposed buildings are an excessive distance from the street necessitating fire apparatus access and provisions of an on-site fire hydrant(s) as required by the Costa Mesa Fire Department. The City's Fire Department has required the installation of an automatic fire sprinkler system pursuant to NFPA 13 requirements.
- Q. The creation of the subdivision and related improvements is consistent with the General Plan and Mesa West Bluffs Urban Plan.

EXHIBIT "B"

CONDITIONS OF APPROVAL

- Plng. 1. Mitigation Measures from the Westside Lofts IS/MND have been included as conditions of approval. If any of these conditions are removed, the Planning Commission must make a finding that the project will not result in significant environmental impacts, that the condition(s) are within the responsibility and jurisdiction of another public agency, or that specific economic, social, or other considerations make the mitigation measures infeasible.
2. Final Master Plan PA-07-20/VT-16999 shall comply with the conditions of approval, code requirements, and mitigation measures of the Westside Lofts IS/MND and as listed in the attached Mitigation Monitoring Program (Exhibit "C"). Additional conditions of approval are also included as part of the Mitigation Monitoring Program.
3. The conditions of approval and code requirements for PA-07-20/VT-16999 shall be blueprinted on the page following or containing the site plan.
4. Prior to issuance of building permits, the developer shall provide the Conditions, Covenants, and Restrictions (CC&Rs) to the Development Services Director and City Attorney's office for review. The CC&Rs must be in a form and substance acceptable to, and shall be approved by the Development Services Director and City Attorney's office. The CC&Rs shall contain provisions that effectively implement the following requirements: (1) require that the homeowner's association (HOA) effectively manage tenant and guest parking onsite and employ necessary measures (e.g. valet parking, mechanical lift parking, tandem parking, etc.) as needed. If onsite parking is not appropriately managed by the HOA, the Development Services Director shall require implementation of corrective measure(s) to address onsite parking problems in the future; (2) require that the HOA contract with a towing service to enforce the parking regulations; (3) require that the HOA prohibit any clothing, beach towels, banners, textiles, or any other items deemed as visual clutter to be hung from private balconies; (4) As applicable to the garages of the live/work units, the CC&Rs shall contain provisions requiring that the homeowner's association (HOA) require homeowners to maintain a 20' x 20' unobstructed area in their enclosed garages to allow parking of two vehicles instead of any other purpose (e.g. storage); and (5) Any subsequent revisions to the CC&Rs related to these provisions must be reviewed and approved by the City Attorney's office and the Development Services Director before they become effective, and (6) as applicable to the residential units, the CC & R's shall address occupancy limits. These requirements apply to the residential component and the live/work units.
5. Garages for individuals units shall be equipped with automatic garage door openers and roll-up garage doors.
6. Applicant shall provide proof of establishment of a homeowner's association prior to release of any utilities.
7. The parking management plan shall be approved by the Development Services Director and Transportation Manager prior to issuance of building permits. The

Parking Management Plan shall denote the following: (1) Method of allocation of assigned parking; (2) Location of visitor parking including appropriate signage; (3) Location of security gates if any, and how gates will be operated; (4) Location of employee parking.

8. Dependent on the final mix of bedroom types for the dwelling units and total square footage of nonresidential areas, the number of parking stalls and parking design configuration may be adjusted. If this mix is modified, a final parking study shall be reviewed/approved by the Development Services Director prior to issuance of a building permit. The parking study shall demonstrate the following:
 - a) Residential parking complies with the parking requirements of the Mesa West Bluffs Urban Plan.
 - b) Nonresidential parking, including shared parking within the residential guest parking areas, complies with parking rate for ancillary retail uses as deemed appropriate by the Development Services Director.

Final parking supply of any revised development scenario (i.e. revision in unit mix and square footage of nonresidential areas) shall conform to a shared parking study completed for the project and approved by the Development Services Director.

9. The approximately 1,750 square foot ancillary retail building shall consist of retail businesses.
10. The permitted and conditionally permitted uses for the five live/work units shall be as specified in the live/work matrix in the Mesa West Bluffs Urban Plan. All other uses not specifically described in the live/work matrix and which may involve higher traffic generating uses shall be considered as conditional uses or prohibited uses, as deemed appropriate by the Development Services Director.
11. Prior to issuance of grading permits, developer shall submit for review and approval a Construction Management Plan. This plan features methods to minimize disruption to the Playport Mobile Home Park and Westside residential communities through specified measures, such as construction parking and vehicle access and specifying staging areas and delivery and hauling truck routes.
12. Developer shall submit for review a Land Use Restriction requiring that the business operator(s) and resident(s) of a live/work unit be one and the same. In other words, the work space of the live/work unit shall not be subleased to person(s) not residing in the living quarters. The Land Use Restriction shall be approved by the Development Services Director and recorded by the Developer at the County of Orange prior to issuance of building permits.
13. [deleted]
14. Prior to issuance of building permits, developer shall contact the U.S. Postal Service with regard to location and design of mail delivery facilities. Such facilities shall be shown on the site plan, landscape plan, and/or floor plan.

15. For the residential component, the range of primary street addresses shall be displayed on a complex identification sign visible from the street. Street address numerals shall be a minimum 12 inches in height with not less than 3/4-inch stroke and shall contrast sharply with the background.
16. Address assignment shall be requested from the Planning Division prior to submittal of working drawings for plan check. The approved address of individual units, suites, buildings, etc, shall be blueprinted on the site plan and on all floor plans in the working drawings.
17. All live/work units shall be initially offered as "for sale" units. Prior to approval of the final subdivision map, the applicant shall obtain from the State of California Department of Real Estate a written acknowledgement that the developer of this residential condominium project, that will include a recorded subdivision map, recorded CC&Rs, and establishment of a homeowners association, may proceed to rent and/or lease the units for an indefinite period of time. All 151 residential condominiums may be initially offered as rental units. The subdivision map shall be final and recorded prior to issuance of building permits. Park fees currently estimated at approximately \$1.6 million dollars shall be remitted to the City prior to approval of the final map. The dwelling units shall be constructed to condominium building standards (i.e. advanced noise attenuated walls, increased firewall standards, etc.). If the housing market conditions are supportive of condominium sales, the Developer shall make reasonable efforts to sell these units as condominiums in the future (*revised June 23, 2008*).
18. The site plan submitted with initial working drawings shall contain a notation specifying that the project is a "common interest development" and shall specify the ultimate development property lines.
19. To avoid an alley-like appearance, the private street shall not be entirely paved with asphalt nor be developed with a center concrete swale. The entry/exit drive of the private street shall be made of stamped concrete or pervious pavers. The final landscape concept plan shall indicate the landscape palette and the design/material of paved areas, and the landscape/hardscape plan shall be approved by the Planning Division prior to issuance of building permits.
20. The subject property's ultimate finished grade level may not be filled/raised in excess of 30" above the finished grade of any abutting property. If additional fill dirt is needed to provide acceptable onsite storm water flow to a public street, an alternative means of accommodating that drainage shall be approved by the City's Building Official and City Engineer prior to issuance of any grading or building permits. Such alternatives may include subsurface tie-in to public storm water facilities, subsurface drainage collection systems and/or sumps with mechanical pump discharge in-lieu of gravity flow. If mechanical pump method is determined appropriate, said mechanical pump(s) shall continuously be maintained in working order. In any case, development of the subject property shall preserve or improve the existing pattern of drainage on abutting properties.
21. Street trees in the landscape parkway shall be selected from Appendix D of the Streetscape and Median Development Standards and appropriately sized and spaced (e.g. 15-gallon size planted at 30' on centers), or as determined by the Development Services Director once the determination of parkway size is made. The final landscape concept plan shall indicate the design and material of these

areas, and the landscape/hardscape plan shall be approved by the Planning Division prior to issuance of building permits.

22. The landscape plan shall feature 24-inch box trees and 5-gallon shrubs that exceed the minimum size requirements of trees and shrubs as described in the City's landscaping standards to the satisfaction of the Development Services Director. Specifically, the 10-foot street setback areas along Monrovia Avenue and Babcock Street shall be landscaped with trees and vegetation to the fullest extent possible. The landscape plan shall be approved prior to issuance of building permits. The landscape palette shall incorporate native California plants and/or drought tolerant plant species.
23. The interior landscaped areas (approximately 30' x 30' areas) along the clubhouse and along the north elevation of the parking structure shall be considered as passive recreational areas. Street furniture and lighting shall be installed in these areas to encourage passive use by the residents (i.e. reading, visiting with guests, etc.).
24. Prior to submission of a final landscape plan, developer shall seek approval from the Parks and Recreation Commission for the removal of any trees within the public right-of-way. Commission will require that the City be compensated for the loss of street trees in the public right-of-way pursuant to a 3-to-1 tree replacement ratio. Any conditions imposed by the Parks and Recreation Commission shall be identified on the final landscape plan. The developer is advised that the approval process may take up to three months; therefore, it is advised to identify any affected trees and make a timely application to the Parks and Recreation Commission to avoid possible delays.
25. The project site shall be graded in a manner to eliminate the necessity of retaining walls within the project site to the maximum extent feasible. This condition excludes the proposed perimeter retaining walls along the development lot lines.
26. Unless as otherwise permitted pursuant to an approved Planned Signing Program, the following shall apply: There shall be no signage above the second floor of the commercial buildings. There shall be no signage above the first floor of the live/work units. Building wall signage for the residential component shall be limited to the identification of the residential development in the form of a monument sign, entry sign, and directional signage.
27. No modification(s) of the approved building elevations including, but not limited to, changes that increase the building height, removal of building articulation, or a change of the finish material(s), shall be made during construction without prior Planning Division written approval. Failure to obtain prior Planning Division approval of the modification could result in the requirement of the applicant to (re)process the modification through a discretionary review process such as an amendment to the Master Plan, or in the requirement to modify the construction to reflect the approved plans. Applicant shall contact the Planning Division at 714-754-5245 to obtain authorization for any revisions.
28. The developer shall contact the current cable service provider prior to issuance of building permits to arrange for pre-wiring for future cable communication service.

29. The developer shall contact the Planning Division to arrange for an inspection of the site prior to the final inspections. This inspection is to confirm that the conditions of approval and code requirements have been satisfied.
30. Nighttime lighting shall be minimized to provide adequate security and creative illumination of building, sculptures, fountains, and artwork to the satisfaction of the Development Services Director. Any lighting under the control of the developer shall be directed in such a manner so as to not unreasonably interfere with the quiet enjoyment of nearby residential uses, including on-site residential uses.
31. The nonresidential buildings shall use low reflective glass and building materials to minimize daytime glare to the fullest extent possible.
32. Show method of screening for all ground-mounted equipment (backflow prevention devices, Fire Department connections, electrical transformers, etc.). With the exception of back-flow prevention devices, ground-mounted equipment shall not be located in any landscaped setback visible from the street and shall be screened from view, under the direction of Planning Staff.
33. If the project is constructed in phases, the decorative block wall, landscaping within the street setback areas, and irrigation shall be installed prior to the release of utilities for the first phase.
34. Prior to submittal of working plans for plan check, applicant shall submit a written determination from the Sanitary District and/or any private trash hauler that trash collection service can be provided to each individual live/work unit. This letter shall be remitted to the Planning Division prior to issuance of building permits.
35. Construction, grading, materials delivery, equipment operation or other noise-generating activity shall be limited to between the hours of 7 a.m. and 8 p.m., Monday through Friday, and between the hours of 8 a.m. and 6 p.m. on Saturday. Construction is prohibited on Sundays and Federal holidays. Exceptions may be made for activities that will not generate noise audible from off-site, such as painting and other quiet interior work.
36. Energy efficient exterior doors and windows shall be installed on all building elevations.
37. Install appliances, water heaters, and light fixtures with Energy Star or better rated appliances and fixtures including a programmable heating system.

Eng.

38. Developer shall maintain the public right-of-way in a "wet-down" condition to prevent excessive dust and promptly remove any spillage from the public right-of-way by sweeping or sprinkling.
39. Developer shall submit a hydrology/hydraulic study for review/approval by the City Engineer prior to issuance of grading permits.
40. Developer shall comply with any conditions of approval as indicated in the City Engineer's letter dated October 1, 2007 (attached).

Trans.

41. Developer shall remove "dead-end" driveway on Monrovia Avenue. If fire access is required to be shown on the building plans during plancheck, construct a half height curb for emergency access and paint red curb to restrict parking in this area.
42. Developer shall construct Type II drive approach at locations submitted on site plan. Developer shall comply with minimum clearance requirements from the property lines and any vertical obstructions.
43. Prior to issuance of building permits for the parking structure, developer shall submit a final parking management plan denoting (1) method of allocation of assigned parking; (2) location of visitor parking including appropriate signage; (3) location of security gates and how these gates will be operated;
44. Developer shall relocate powerpole, fire hydrant, and all of the utilities necessary to accommodate new driveway approaches.
45. Developer shall close unused drive approaches with full height curb and gutter.
46. Developer shall remove existing red curb paint along property frontage on Monrovia Avenue and Babcock Street to accommodate additional on-street parking.
47. Developer shall submit detailed plans for parking structure providing dimensions for all parking spaces and aisle widths per City standard.
48. Developer shall identify width of drive aisle and island approaching the gated residential entry. Provide a minimum of 40-foot total overall width at guest lane, including median and entry/exit driveway for turnaround.
49. Developer shall identify width of drive aisle adjacent to garages between main access drive and office parking lot.
50. Developer shall identify ramp slopes within the parking structure and comply with the City's ramp slope standards. Ramps with parking shall not exceed 5 percent slope.

Fire

51. Water mains and hydrants shall be installed to the standards of the Mesa Consolidated Water District and dedicated along with repair easements to that agency.
52. The on-site hydrant shall be attached to the underground mains of the fire sprinkler system or installed to the standards of the Mesa Consolidated Water District and be dedicated along with repair easements to that agency.
53. Developer shall show existing and proposed fire hydrants for the project on the site plan.

54. Developer shall provide a fire alarm system for the 4-story residential units.
55. Developer shall extend Drive F so that the Fire Department can ladder the building from the drive. However, the drive must be no longer than 150' or a turnaround will be required.

Police

56. Developer shall work with the Police Department in implementing security recommendations to the maximum extent feasible, as specified in correspondence from the Police Department, dated September 26, 2007.



PLANNING COMMISSION

SUPPLEMENTAL MEMORANDUM VI.5a.

MEETING DATE: JUNE 23, 2008

SUBJECT: REVISED RESOLUTION AND ADDITIONAL OPPOSITION LETTER FOR REQUESTED AMENDMENT FOR NEXUS DEVELOPMENT (PA-07-20)

DATE: JUNE 17, 2008

**FOR FURTHER INFORMATION CONTACT: MINOO ASHABI, AIA, SENIOR PLANNER
(714) 754-5610**

This supplemental memo provides the following information:

- Minor revisions to clarify the recommended Planning Commission Resolution for the proposed amendment to Westside Lofts project are attached.
- Correspondence received from John T. Hawley and Michael R. Harrison, nearby property and business owners, expressing concerns with the project being offered as rental units are attached.

Attachment: 1. Underlined and Strike-out Text of PC Resolution
2. Correspondence

Distribution: Assistant City Attorney
Deputy City Manager- Dev. Svs. Director
City Engineer
Fire Protection Analyst
Staff (4)
File (2)

Ms. Cindy Nelson
Nexus Development
1 MacArthur Place, Suite 300
Santa Ana, CA 92707

Mr. Mike Evans
1720 Whittier
Costa Mesa, CA 92627

Mr. Hawley, David
Railmakers, Inc.
1056 San Pablo Cir
Costa Mesa, Ca 92626

Mr. Roger MacGregor
Roger MacGregor Yacht Corporation
1631 Placentia
Costa Mesa, CA 92627

Michael Harrison
Trico Realty Inc.
3100-A Pullman Street
Costa Mesa, CA 92626

RESOLUTION NO. PC-08-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA APPROVING ZA-08-17 FOR AN AMENDMENT TO PLANNING COMMISSION RESOLUTION PC-07-79 APPROVING THE FINAL MASTER PLAN PA-07-20 FOR THE WESTSIDE LOFTS MIXED USE DEVELOPMENT AT 1640 MONROVIA AVENUE.

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, Zoning Application ZA-08-17 was filed by Cynthia Nelson of Nexus Development Corporation for the property located at 1640 Monrovia Avenue, requesting modification of Condition No. 17 of Resolution PC-07-79 to allow 151 condominium units to be initially offered as rental units;

WHEREAS, the proposed Westside Lofts mixed-use development consists of a Final Master Plan PA-07-20 for (a) 42,000 sq. ft. commercial space in two- to-four story buildings; (b) 151 residential condominiums in a four-story building complex; (c) 5 custom live/work units in three-story buildings; (d) 4.5-level parking structure and surface parking spaces (overall total of 475 parking spaces);

WHEREAS, a duly noticed public hearing was held by the Planning Commission on June 23, 2008 with all persons having been given the opportunity to be heard both for and against the proposed project;

WHEREAS, Zoning Application ZA-08-17 involves revising Condition No. 17 of PC Resolution PC-07-79 to reflect the following final language:

All live/work units shall be initially offered as "for sale" units. Prior to approval of the final subdivision map, the applicant shall obtain from the State of California Department of Real Estate a written acknowledgement that the developer of this residential condominium project, that will include a recorded subdivision map, recorded CC&Rs, and establishment of a homeowners association, may proceed to rent and/or lease the units for an indefinite period of time. All 151 residential condominiums may be initially offered as rental units. The subdivision map shall be final and recorded prior to issuance of building permits. Park fees currently

estimated at approximately \$1.6 million dollars shall be remitted to the City prior to approval of the final map. The dwelling units shall be constructed to condominium building standards (i.e. advanced noise attenuated walls, increased firewall standards, etc.). If the housing market conditions are supportive of condominium sales, the Developer shall make reasonable efforts to sell these units as condominiums in the future.

BE IT RESOLVED that, based on the evidence in the record, the Planning Commission hereby **APPROVES** the requested amendment to Resolution of approval PC-07-79 with respect to the property described above.

BE IT RESOLVED that the Planning Commission finds that Zoning Application ZA-08-17 related to the revision of Condition No. 17 of PC-07-79 does not have any significant material effect to the Westside Lofts mixed-use development project, as the subdivision map for condominium purposes, establishment of a homeowner's association, and all related provisions for owner-occupied housing for both the live/work units and residential condominiums will still be required. Therefore, the Planning Commission finds that the original environmental and other findings for Final Master Plan PA-07-20, (Exhibit "A," Findings of PC-07-79) are still applicable to the project as revised by Zoning Application ZA-08-17.

BE IT FURTHER RESOLVED that the Costa Mesa Planning Commission does hereby find and determine that adoption of this Resolution is expressly predicated upon the activity as described in the staff reports for ZA-08-17 and PA-07-20, based on the original findings contained in Exhibit "A" and the original conditions of approval contained in Exhibit "B" (as modified herein), and mitigation measures contained in Exhibit "C" of PC Resolution PC-07-79. The revised Planning Commission Resolution PC-07-79 is attached as Exhibit 1.

PASSED AND ADOPTED this 23rd day of June, 2008.

Donn Hall, Chair
Costa Mesa Planning Commission

ASHABI, MINOO

From: Railmakers, Inc. [railmakers2@la.twcbc.com]

Sent: Friday, June 13, 2008 1:54 PM

To: ASHABI, MINOO

Subject: Nexus Rental Amendment

Dear Minoo Ashabi, In the many years that Costa Mesa residents, consultants, City staff, property owners, Planning Commissioners and Council Members have considered Westside improvement no one has recommended high density rentals a path to Westside improvement. The highest priority has been to introduce owner occupied housing not more rentals. Approving this amendment for rentals will be a step backward for the Westside. Bailing out a developer in financial trouble is not our responsibility please recommend that the amendment be rejected. Respectfully, John T. Hawley Westside business and property owner for 39 years



June 13, 2008

Donn Hall, Chairman
Planning Commission
City of Costa Mesa
PO Box 1200
77 Fair Drive
Costa Mesa, CA 92628-1200

Re: Zoning Application ZA-08-17/Nexus Development Corporation
Master Plan Amendment/ Master Plan PA-07-20
Westside Lofts Mixed-USE Project
Hearing Date: June 23, 2008

Chairman Hall:

Trico Rents L.P. ("Trico") would like to thank you for the opportunity to comment on the above entitled zoning application and the proposed "...major amendment..."¹ initiated by the applicant Nexus Development. Trico is an adjoining landowner to the project and has made its concerns known previously regarding various aspects of the project. As a large property owner on the Westside, Trico is as concerned as anyone in the City about revitalizing the Westside. We do not believe that a project with 151 new rental units is consistent with the intent of the Mesa West Bluffs Urban Plan or will be a positive influence in revitalizing the Westside. We think it helps to view the subject application with a historical perspective.

History and Stated Objectives of Applicant

Since the project was first proposed the stated objectives of the applicant were:

"...Provide **home ownership opportunities** that meet current market demand (emphasis added)...."

"...Create a mixed-use community that is sensitive to surrounding land uses, yet responsive to the changing economic conditions of the area...."²

¹ The April 15, 2008 letter of Applicant, Nexus, which forms the sole basis of Zoning Application ZA-08-17, refers to the application as a "...major amendment...."

² Westside Lofts IS/MND, 2-2, August 2007.

The original proposal was to develop 151 residential condominiums, 5 live/work units and 6 industrial office buildings. This was the plan analyzed by the consultants to the City, City Staff and Planning Commission in ultimately approving the project.

The Mesa West Bluffs Urban Plan

The project was presented and approved as being consistent with the objectives of the Mesa West Bluffs Urban Plan, which include:

“...To meet demand for a **new housing type** to satisfy a diverse residential populations comprised of artists, designers, craftspeople, professionals, and small business entrepreneurs....”

“...To promote a **new type of urban housing** that would be target-marketed to people seeking alternative housing choices in an industrial area...”³ (emphasis added)

Adoption by the Planning Commission Every Analysis of the Project Assumed 151 Ownership Condominiums

Accordingly, when the project was considered by the Planning Commission the underlying themes of development presented by the applicant and endorsed by the City and the consultants to the City were residential development and **pride of ownership**. These themes were important underpinnings of the decision to approve the project ultimately reached by the Planning Commission on or about November 13, 2007.⁴

The most significant benefit of the project as originally proposed by the applicant and as recognized and supported by staff and by the Planning Commission was that the proposed project would help revitalize the Westside. It would not be just another project but would rather be a “...vision...” for the City. “...A mixed-use development project (that) would help stimulate revitalization in the Westside by offering a new type of urban housing, live/work units, and potential corporate headquarters for the surfing and apparel industry....”

The Concern of “...Over-Crowded Apartments...”

It was this vision of consistency with the objectives of the Mesa West Bluffs Urban Plan, which led to the adoption of the applicant’s zoning application and master plan amendment. Due to concerns about the possibility of the units becoming a rental property the Planning Commission included two (2) specific conditions for approval as follows:

³ This theme runs throughout the application as well as the Westside Lofts IS/MND including the analysis of public services such as schools, police and fire, traffic etc. at the same theme appears in the City’s Initial Study of March 6, 2006 entitled “Initial Study/Mitigated Negative Declaration, Mixed-Use Overlay District and Westside Urban Plans...*Residential Ownership Plan*...” (emphasis added) and See Staff Report Dated November 1, 2007 for meeting date of November 13, 2007.

After a discussion by Commission Clark and Ms. Brandt and the applicant regarding the concerns that "... the buildings could become over-crowded apartments "...", Commissioner Clark added a clause"... "as Item No. 6 of Condition No. 4. Ms. Nelson agreed to this clause. ..." The purpose of the amendment as ultimately adopted by the Commission was to address the fear that the project would become nothing more than more overcrowded apartments on the Westside; not a "...new type of urban housing..."⁵ and therefore fail to help revitalize the Westside and be inconsistent with the Mesa West Bluffs Urban Plan

Finally the Planning Commission and staff likewise recognized this same concern when they included condition 17 in the approval of the application which was amended by Chairman Hall, Commissioner Egan, Commissioner Righheimer, and agreed to by the applicant. The condition ultimately stated that " All residential units and live/work units shall be initially "for sale" units. **The site shall not be developed for apartments or other non owner-occupied units....**" (emphasis added).

The Findings of the Commission

The Findings made by the Commission at the time of the adoption of the project were that the goals of the Mesa Bluff Urban Plan would be obtained and that the proposal would comply with the objectives of the Mesa Bluffs Urban plan to "promote Westside revitalization **through homeownership, encourage owner-occupied housing** (emphasis added)..." and provide a "new type of urban housing...."

The Current Proceedings before the Planning Commission

In checking with our real estate attorney who also consults with cities on municipal code issues and has served as both a planning commissioner and city councilman in another city, he believes there are some serious discrepancies in how the present application is presently being considered. The points made below are intended to raise these questions in order to insure that whatever actions are taken are consistent with Costa Mesa's Municipal Code.

The current proceedings before the City Planning Commission apparently stem from the Zoning Application ZA-08-17, for a Master Plan Amendment to Final Licensee Plan PA-07-20 for the Westside Lofts Mixed-Use Project. Pursuant to a notice received by Trico on or about May 12, 2008, the Zoning Administrator would "...render a decision on Thursday May 22, 2008 or as soon as possible thereafter..." on the above referenced Zoning Application. As of the date of this writing no decision has been made to approve or disapprove by the Zoning Administrator.

While there is some confusion as to the appropriateness of the request by the Applicant, Nexus, for they seek a "...major amendment..." to the approved Master Plan, it is assumed that the

⁵ See Minutes of Planning Commission of November 13, 2007.

Applicant is seeking the major amendment pursuant to Costa Mesa Zoning Code, thereby invoking the authority of the Zoning Administrator initially.⁶

Authority of Zoning Administrator and Application

Pursuant to Sec. 13-11 of the Costa Mesa Municipal Code the Zoning administrator's authority is established in subsection (b) which states:

"...(b) The zoning administrator is authorized to approve, conditionally approve, or deny the following discretionary planning applications. The zoning administrator may forward any action to the planning commission for review.

- (1) Administrative adjustment;
- (2) Minor conditional use permit;
- (3) Lot line adjustment; and
- (4) Any action specified in this Zoning Code...."

However assuming that subsection (4) is the basis for the proposed major amendment, there is no vesting of authority in the Zoning Administrator to consider a major amendment of the type being considered when the major amendment fails to comply with the City's 2000 General Plan or the force of law of the Mesa West Bluffs Urban Plan area. The proposed amendment is incompatible with the Mesa West Bluffs Urban Plan and further deals with the type of "...policy decisions..." as set forth by staff in the staff report of November 13, 2007.

Accordingly it appears that the Zoning Application is an inappropriate attempt to seek a modification of terms and conditions of approval for the project, since it seeks to modify at least two conditions of approval, i.e., Nos. 4 and 17, which would be inconsistent with the Major Findings for approval, i.e. A and B and inconsistent with the objectives of the Mesa West Bluffs Urban Plan. Accordingly the application should have been made directly to the Planning Commission as required by Sec. 13-10 of the Costa Mesa Municipal Code which sets forth that:

- "...(2) The planning commission is authorized to act upon the following discretionary actions:
- a. Recommend to the city council approval, conditional approval or denial of general plan amendments, specific plans, rezones, Zoning Code amendments, development agreements, density bonuses with public financial incentives, preliminary and final master plans, and any other action specified in this Zoning Code.
 - b. ..."

In fact until clarification of the subject application it appears that the Applicant is seeking to invoke new terms and conditions of approval; a potential General Plan Amendment and/or an Amendment to the Mesa West Bluffs Urban Plan. Irrespective of the content of the Application it is clear that the proposal of the Applicant is incompatible with the Mesa West Bluffs Urban Plan and the findings of the Planning Commission adopted November 13, 2007.

Commission Lacks Jurisdiction to Hear the Current Application Current Application is to Develop 151 Rental Units and Later Convert Them for Sale

⁶ It is assumed until clarification that the Applicant and Staff seek to invoke Sec. 13-28(g)(2) of the Costa Mesa Municipal Code.

The Zoning Administrator however failed to approve, conditionally approve, or deny the discretionary planning application. Accordingly the Planning Commission has no authority to render any decision until the decision is reached by the Zoning Administrator. Combined with the pending application over which the Zoning Administrator has no authority to act along with the failure to render a decision in the matter, the Planning Commission has no authority to act until a decision is either made or a new application is made directly to the Planning Commission. Such application is rather one for a modification of the terms and conditions for approval reached by the Planning Commission on or about November 13, 2007;⁷ an amendment to the Mesa West Bluffs Urban Plan; a variance or amendment to the General Plan; a modification to or amendment of the findings for approval. The current application contains none of the foregoing.

Commission Should Not Rush to Judgment

Because of the significant changes being sought and the different impacts created by the new proposal the Commission should consider this as a new application and direct staff to consider the consequences of the proposed changes. It is important that the ultimate goals of the City be achieved and revitalization of the Westside be the end product. Accordingly the following information should be gathered before any decision is made:

1. A scoping EIR document should be created to consider the possible additional and new impacts that the project may create;
2. The above should consider issues including but not limited to trip generations as a result of the proposed major amendment; public services; potential occupancy levels of the 151 high density rental units as opposed to owner occupied condominiums;
3. What effect might the changes have on property values?
4. What, if any, effective controls could the City impose on occupancy limits?
5. Incompatibility of the new project with the Mesa West Bluffs Urban Plan;
6. Should the current application be processed under the municipal code that deals with condominium conversions as that is the stated intent of the Applicant?⁸

Not Another Government Bail Out

At the time the project initially came before the Planning Commission there were and still are a number of concerns raised about the project and the fact that no one wanted it to become just more "...over-crowded apartments..." and/or another "...white elephant..." Moreover, there is

⁷ Trico recognizes that the applicant in conjunction with the City may believe that the Zoning Administrator can merely refer the matter for review to the Planning Commission, however it is Trico's position that in order to do so, the application would have been the type of application that should have been originally brought before the Zoning Administrator initially for the Zoning Administrator to have been legally able to render a decision as required by the Costa Mesa Municipal Code. Because the Zoning Administrator could not have rendered a decision on an application which seeks to dramatically change the scope of the project, the underlying assumptions made at the time the project was processed and invoked policy decisions, it has no authority to forward the matter to the Planning Commission.

⁸ See letter of applicant of April 15, 2008 in support of application.

no change in conditions which would justify the current application as they were considered and commented on by the applicant at the time of original hearing. Accordingly if the Planning Commission decides to move forward and make a decision at its hearing on June 23, 2008 without the necessary information to make an informed decision, then the Planning Commission should deny the current application for the following reason:

1. The application as proposed fails to meet the findings of the Planning Commission of November 13, 2007;
2. The application would render the project incompatible with the Mesa West Bluffs Urban Plan, as a matter of law;
3. The application would not be compatible with the City's General Plan;
4. The project is otherwise incompatible with surrounding land uses;
5. The project should not go forward until the issues of density, traffic and City services are adequately briefed in an amended through a new scoping EIR;
6. The project will not have a positive impact on revitalization of the Westside;
7. The project should not go forward until the issue of occupancy of the units is fully briefed and determined to have no impact on the services provided by the City;
8. The project is not a new type of urban housing and does not encourage home ownership;
9. The project is an apartment complex as disclosed in its application and Applicant is seeking to develop an apartment complex with the option to later convert it to for sale condominiums. Accordingly the application fails as a matter of law;
10. The project as a rental property has a serious potential to become a white elephant on the Westside and a negative impact on revitalization of the Westside;

If you have any questions regarding the foregoing, please do not hesitate to contact me.

Respectfully,

Trico Rents L.P., a California limited partnership

By: 
Name: Michael R. Harrison

VI.5
ZA-08-17

From: Richard Brady [mailto:RichardHazelBrady@hotmail.com]
Sent: Wednesday, June 18, 2008 2:45 PM
To: CMCouncil; PLANNING COMMISSION
Subject: Nexus Corp. Monrovia Street Hearing

NO, on rental units build permission request by the Nexus Corp for Monrovia Street in Costa Mesa.

Condo's, yes, rental units NO.

We live in Play Port Mobile Park "for seniors" and we do not want the noise and traffic that an apartment complex would create directly across from our home. There are a number of persons that are on hospices care and extra noise, traffic and potential trespass issues will obviously occur and cause unnecessary disturbance.

Please do not approve any apartment rental buildings on or near our address.

Thank you,

Richard A. Brady
Hazel M. Brady
903 W. 17th Street, No. 56
Costa Mesa, CA 92627-4458

RichardHazelBrady@hotmail.com

JUN 19 2008

June 19, 2008

REC'D JUN 18

Ms. Claire Flynn
Principal Planner
City of Costa Mesa
P.O. Box 1200
Costa Mesa, CA 92628-1200

Subject: Final Master Plan PA-07-20 – Amendment to Conditions

Dear Ms. Flynn:

After reviewing the staff report for our item on the June 23 Planning Commission meeting, it became apparent that the condition amendment as written needed further clarification, along with Condition No. 4 (for consistency with Condition 17) and Condition No. 6 (minor clarification). We would like to request that the attached language changes be considered by the Planning Commission in lieu of what was provided in the staff report.

The changes as proposed more specifically address the actual process a developer must follow with the Department of Real Estate when processing a residential condominium project. The language as proposed will enable us to file for a "white report" with the DRE and be in a position to offer the units for sale should the market conditions warrant. These changes are noted in Condition No. 17. We added further language to clarify our intent with regard to imposing occupancy restrictions in the units. We are aware this is the primary issue with the Planning Commission, City Council and neighbors. We are hopeful the limitation on occupancy provided for in the CCR's, along with the City's review and approval authority for future changes regarding this limitation, will address the parties' concerns with regard to the long-term future of this project. We are proposing the following occupancy limits to be included in the CCR's:

Studios	2 persons
1 bedroom	3 persons
2 bedrooms	4 persons

We are also seeking a minor amendment to Condition No. 6 to be consistent with condition No. 17; basically, clarifying that the homeowner's association pertains only to the 151 residential condominiums.

Ms. Claire Flynn

Page 2 of 2

We have provided both a redlined and clean version of the proposed changes. Thank you for your continued assistance, and we look forward to discussing this with the Planning Commission on Monday, June 23.

Sincerely,

A handwritten signature in black ink, appearing to read "Cynthia Nelson", with a stylized flourish at the end.

Cynthia J. Nelson

Nexus Development

Vice President of Government Relations

CN/sha

4. Prior to issuance of building permits, the developer shall provide the Conditions, Covenants, and Restrictions (CC&Rs) to the Development Services Director and City Attorney's office for review. The CC&Rs must be in a form and substance acceptable to, and shall be approved by the Development Services Director and City Attorney's office. ~~The~~ With respect to the residential condominiums, the CC&Rs shall contain provisions that effectively implement the following requirements: (1) require that the homeowner's association (HOA) effectively manage tenant and guest parking onsite and have the authority to employ necessary measures (e.g. valet parking, mechanical lift parking, tandem parking) as needed. If onsite parking is not appropriately managed by the HOA, the Development Services Director shall require implementation of corrective measure(s) to address onsite parking problems in the future; (2) require that the HOA contract with a towing service to enforce the parking regulations; (3) require that the HOA prohibit any clothing, beach towels, banners, textiles, or any other items deemed as visual clutter to be hung from private balconies; and (4) As occupancy limits applicable to the garages of residential units, With respect to the live/work units, the CC&Rs shall contain provisions requiring that the homeowner's association (HOA) require homeowners to maintain a 20' x 20' unobstructed area in their that the enclosed garages to allow are to be used solely for their intended use of parking of two vehicles instead of and shall not be used for any other purpose (e.g. storage); and (5) Any. The CC&R's, as applicable, shall contain a provision that any subsequent revisions to the CC&Rs related to these the above provisions must be reviewed and approved by the City Attorney's office and the Development Services Director before they become effective, and (6) as applicable to the residential units, the CC&Rs shall address occupancy limits. These. The requirements of this section shall apply to the residential component and the live/work units only.
6. Applicant shall provide proof of establishment of a homeowner's association with respect to the residential condominiums prior to release of any utilities.
17. All live/work units shall be initially offered as "for sale" units. Prior to approval With respect to the residential condominiums, prior to recordation of the final subdivision map, the applicant shall ~~obtain~~ provide evidence obtained from the State of California Department of Real Estate a written acknowledgement that the developer of this residential condominium project, that will include a recorded subdivision map, recorded CC&Rs, and establishment of that it has received a substantially completed subdivision public report application. Prior to receipt of a certificate of occupancy for the residential condominiums, the applicant shall provide evidence that CC&Rs (in substantial conformance with the CC&Rs previously approved by the Development Services Director and City Attorney's office with respect to the provisions set forth in condition 4 above (only)) have been recorded and that a homeowners association, may proceed has been established. Subject to compliance with the above conditions, all 151 residential condominiums may be initially offered as rental units and applicant may continue to rent and/or lease the units for an indefinite period of time. All 151 residential condominiums may be initially offered as rental units. The ~~Notwithstanding the foregoing, (1) the subdivision map shall be final and recorded prior to issuance of building permits. Park; (2) park fees currently estimated at approximately \$1.6 million dollars shall be remitted to the City prior to approval of the final map. The dwelling; and (3) the~~

residential condominium units shall be constructed to condominium building standards (e.g. advanced noise attenuated walls, increased firewall standards). ~~If the housing market conditions are supportive of condominium sales, the Developer shall make reasonable efforts to sell these units as condominiums in the future (revised June 23, 2008),~~ at any time after completion of the residential condominiums, the Developer decides to sell the individual units, provided Developer has a valid Final Public Report from the Department of Real Estate, no further approval from the City shall be required.



CITY OF COSTA MESA

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

DEVELOPMENT SERVICES DEPARTMENT

**FOR ATTACHMENTS NOT INCLUDED IN THIS REPORT,
PLEASE CONTACT THE PLANNING DIV. AT (714)754-5245.**